

CLEANUP AND ABATEMENT ORDER NO. R1-2007-0070

FOR
Michael Lockwood

Humboldt County

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board) finds that:

1. Michael Lockwood, 6790 Clover Dr., Eureka, California (hereinafter the "Discharger"), is the listed timberland owner for Timber Harvest Plan (THP) 1-07-084 HUM. The Discharger is a Licensed Timber Operator (LTO) in the State of California (License # C475). The THP was accepted for filing by the California Department of Forestry and Fire Protection (CAL-FIRE) on May 29, 2006, and is still in the review process.
2. Brian Griesbach is the Registered Professional Forester (RPF) of record for the THP.
3. The 5 acre THP is located in the Lower Elk River Watershed (Calwater Number 1110.000402) in Humboldt County, in Section 21 Township 4 North and Range 1 West (Project area). The residence within the Project area associated with the violation is 6790 Clover Drive, Eureka, CA 95503 (Lockwood residence).
4. On June 19, 2007, Regional Water Board staff participated in a preharvest inspection of the Project area. During the inspection, agency representatives from the Regional Water Board, CAL-FIRE, California Department of Fish and Game (DFG), California Geological Survey (CGS), and the RPF of record, observed recent earthmoving activity within the bed and bank of a watercourse directly behind the Lockwood residence. Earth and debris had been moved, placing organic and earthen material in a location with the potential to discharge to waters of the state, and altering the drainage pattern of a watercourse to where the watercourse no longer flows to the culvert inlet. In addition, recent bulldozer activity had disturbed soils along the length of the watercourse leaving exposed soil in a location with the potential to discharge. No erosion control measures were observed. The watercourse classification could not be determined, as the lower portion of the watercourse was entirely obliterated by overlying soils and slash materials. However, some facultative aquatic vegetation (*Juncus* and Slough Sedge) was noted adjacent to the obscured watercourse channel, indicating that Class II habitat may have been buried by the soil and slash materials deposited in the watercourse channel. Class II habitat is defined in the Forest Practice Rules as capable of supporting non-fish aquatic species.

5. The altered watercourse originates above the Lockwood residence where two Class III watercourses come together and flow downhill to a culvert inlet behind the Lockwood residence. Prior to the deposition of the organic and earthen material, the watercourse flowed into the culvert inlet, which carried water past the residence to a box culvert along the driveway. The outlet of the box culvert could not be located during the staff inspection. In addition, the box culvert drop inlet is rusted through and water appears to flow outside the pipe through the fill, which is indicative of failure, or potential to fail. Upslope drainage also has been re-directed to the northern most Class III watercourse by a recently constructed through-cut skid trail, increasing surface drainage area, which increases the potential for erosion.
6. The preharvest inspection was scheduled as a comprehensive review of the 5-acre Project area and all activities proposed in the THP. However, as a result of the conditions discovered in the Project area and numerous proposed changes to the THP, the pre-harvest inspection was postponed to allow the RPF to address the observed changed circumstances and verbal proposed changes to the THP.
7. On June 27, 2007, staff from the Regional Water Board and a Warden representing the California Department of Fish and Game (DFG), inspected the Project area, accompanied by the Discharger. The DFG Warden and Regional Water Board staff obtained further information from the Discharger regarding the recent earthmoving activities and inspected the Project area to evaluate the potential violations of law resulting from the above-described activities that included filling part of a watercourse with organic and earthen material. The agency representatives concluded that the pre-disturbance configuration of the watercourse, with the unknown culvert discharge point, had little or no potential to discharge sediment to downstream receiving waters. However, the altered watercourse drainage patterns resulting from the deposition of material in the watercourse above the Lockwood residence have altered the drainage patterns. Thus, the watercourse must define a new channel through the earthen material and slash. This new channel can potentially result in delivery to downstream receiving waters depending upon where the new channel is developed. Thus, Regional Water Board staff find that the potential for discharge exists at this time due to the placing of slash and earthen material in the watercourse channel above the Lockwood residence, which resulted in the alteration of the watercourse drainage patterns.
8. The heavily rusted drop inlet to the box culvert, and the obscured or unidentified box culvert outlet, is also a water quality concern. It raises the question whether the existing drainage, even prior to the discharger's most recent disturbance, is properly functioning. Even without the deposition of the material in the watercourse, the outlet to the box culvert, which appeared designed to deposit the stream below the residence, was not visible.

9. The Water Quality Control Plan for the North Coast Region (Basin Plan) contains specific standards and provisions for maintaining high quality waters of the state that provide for the beneficial uses listed above. The Action Plan for Logging, Construction and Associated Activities (Action Plan) included in the Basin Plan includes two prohibitions:

- Prohibition 1 - *"The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited."*
- Prohibition 2 - *"The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited."*

Regional Water Board staff concluded that the Discharger is violating Prohibition 2 of the Action Plan.

10. Fish that could be deleteriously affected by discharges of organic and earthen material to streams or watercourses include steelhead trout and coho salmon, which are listed as endangered under the federal Endangered Species Act. The Elk River watershed provides habitat for these species.

11. Other beneficial uses of Elk River and its tributaries which could be deleteriously affected by discharges of organic and earthen material are stated in the Basin Plan include:

- a. Domestic supply
- b. Agricultural supply
- c. Groundwater recharge
- d. Navigation
- e. Water recreation
- f. Non-contact water recreation
- g. Commercial and sport fishing
- h. Cold water fish habitat
- i. Wildlife habitat
- j. Rare, threatened or endangered species
- k. Migration of aquatic organisms
- l. Spawning, reproduction, and/or early development
- m. Estuarine habitat

12. Section 3 of the Basin Plan contains water quality objectives that specify limitations on certain water quality parameters not to be exceeded as a result of waste discharges. The water quality objectives (page 3-2.00-3.00) that are considered of particular importance in protecting the beneficial uses from

unreasonable effect due to discharges from logging, construction, or associated activities, include the following:

- a. Color: Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses.
 - b. Suspended Material: Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.
 - c. Settleable Material: Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.
 - d. Sediment: The suspended sediment load and suspended discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.
 - e. Turbidity: Turbidity shall not be increased more than 20 percent above naturally-occurring background levels. Allowable zones within which higher percentages can be tolerated may be defined for specific discharges upon the issuance of discharge permits or waiver thereof.
13. The discharge of organic and earthen material in the Elk River watershed is especially problematic because the Elk River watershed is listed as an impaired water body under Section 303(d) of the Clean Water Act due to sedimentation /siltation. Water quality problems cited under the listing include: sedimentation, threat of sedimentation, impaired irrigation water quality, impaired domestic supply water quality, impaired spawning habitat, increased rate and depth of flooding due to sediment, and property damage.
14. Timber harvesting activities have been recognized as a contributing factor to the problems of sedimentation and siltation. On December 16, 1997, representatives of CAL-FIRE, California Department of Fish and Game, the California Geologic Survey, and Regional Water Board staff reached consensus that the Elk River watershed had significant adverse cumulative watershed impacts, with timber harvesting a contributing factor.
15. In recognition of the adverse cumulative watershed impacts in the Elk River and their linkages to timber harvesting plan activities, the Regional Water Board approved motions on December 3, 2003 that: (1) recognized additional regulatory and non-regulatory actions were necessary due to the rate and scale of land disturbing activities in five impaired watersheds, including the Elk River; (2) gave direction to Regional Water Board staff to develop a Cleanup and Abatement Order for the Pacific Lumber Company, et al, to address sediment sites (Order No. R1-2004-0028) and issued a Time Schedule Order if the due dates contained in the Order R1-2004-0028 were not met; and (3) required the Pacific Lumber Company and Green Diamond Resources Company to submit Reports of Waste Discharge which would lead to watershed-specific Waste

Discharge Requirements (WWDRs). As a result, WWDRs were issued to those two industrial landowners in the watershed.

16. As a result of the two inspections described above, Regional Water Board staff concludes that the earthmoving activities have: 1) deposited organic and earthen material in a watercourse bed and bank, 2) placed soil, slash and earthen materials in a position where they can potentially discharge to waters of the state and 3) altered drainage patterns of a watercourse and the area in general, which will likely reestablish a new drainage pattern by eroding the deposited soils, potentially causing further discharges of sediment to the Class II watercourse and marsh below the residence.
17. The following sections of the Porter-Cologne Water Quality Control Act authorize the Regional Water Board Executive Officer to require persons suspected of violating Basin Plan objectives to take various actions, including providing technical or monitoring program reports and cleaning up and abating the discharge:
 - Section 13267(a) - *“A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement or authorized by this division, may investigate the quality of any waters of the state within its region.”*
 - Section 13267(b) - *“In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or proposes to discharge waste within its region...that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires.”*
 - Section 13267(c) - *“In conducting an investigation pursuant to subdivision (a), the regional board may inspect the facilities of any person to ascertain whether the purposes of this division are being met and waste discharge requirements are being complied with. The inspection shall be made with the consent of the owner or possessor of the facilities or, if the consent is withheld, with a warrant duly issued pursuant to the procedure set forth in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting the public health or safety, an inspection may be performed without consent or the issuance of a warrant.”*
 - Section 13304(a) - *“Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall*

upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts.”

- *Section 13304 (C) (1) “If the waste is cleaned up or the effects of the waste are abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any governmental agency, the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of the waste within the meaning of subdivision (a), are liable to that governmental agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial action. The amount of the costs is recoverable in a civil action by, and paid to, the governmental agency and the state board to the extent of the latter’s contribution to the clean up costs from the State Water Pollution Cleanup and Abatement Account or other available funds.”*

18. Issuance of this Cleanup and Abatement Order pursuant to Water Code 13304(a) is proper because recent activities on the Project area are causing a violation of the Basin Plan prohibitions contained in the Action Plan, as described in finding 8, above. In addition, the Discharger has caused or permitted waste to be discharged or deposited where it is, or probably will be, discharged to waters of the State and where it creates, or threatens to create, a condition of pollution or nuisance. Pollution is defined in Water Code section 13050(l) as an alteration of the quality of the waters of the state by waste to such a degree which unreasonably affects the waters for beneficial uses. As a result of earthwork activities on the Project area, which placed organic and earthen material in and adjacent to waters of the State, including tributaries of the Elk River, beneficial uses may be unreasonably effected.
19. The technical reports and inspections required by this Order are necessary to ensure that the threats to water quality created by the discharges described above are properly abated and controlled. More detailed information is available in the Regional Water Board’s public file on this matter.
20. This enforcement action is being taken for the protection of the environment and, therefore, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.
21. Failure to comply with the terms of this Order may result in enforcement under the California Water Code. Any person failing to provide technical reports containing information required by this Order by the required date(s) or falsifying any information in the technical reports is, pursuant to Water Code section 13268, guilty of a misdemeanor and may be subject to administrative civil

liabilities of up to one thousand dollars (\$1,000.00) for each day in which the violation occurs. Any person failing to clean up or abate threatened or actual discharges as required by this Order is, pursuant to Water Code section 13350(e), subject to administrative civil liabilities of up to five thousand dollars (\$5,000.00) per day or ten dollars (\$10) per gallon of waste discharged.

22. Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with California Water Code section 13320 and Title 23, California Code of Regulations, Section 2050. The petition must be received by the State Water Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request. In addition to filing a petition with the State Water Board, any person affected by this Order may request a hearing with the Executive Officer or the Regional Water Board to reconsider this Order. To be timely, any such request must be made within 30 days of the date of this Order. Note that even if reconsideration by the Regional Water Board is sought, filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner's legal rights. If you choose to request reconsideration of this Order or file a petition with the State Water Board, be advised that you must comply with the Order while your request for reconsideration and/or petition is being considered.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to California Water Code Sections 13267(b) and 13304, the Discharger shall:

- A. Submit a watercourse cleanup and restoration plan (Plan) to the Regional Water Board Executive Officer by September 10, 2007. The Plan shall be developed by a licensed professional experienced in erosion control and bio-remediation. The Plan shall detail and illustrate to scale the design and construction standards that will be used to remove organic and earthen material from the watercourse, stabilize and establish permanent watercourse bed and banks, provide for erosion control on all exposed soils within 50 feet of the watercourse channel, address the through-cut skid trail surface drainage to prevent erosion, and provide for adequate, functional drainage of the stream past the Lockwood residence.
- B. Upon the Regional Water Board Executive Officer's approval of the Plan, perform the clean up and restoration work as detailed in the Plan. All work shall be completed by October 15, 2007, to avoid sediment discharges resulting from winter rains.
- C. The Discharger, or its duly authorized representative, shall contact Regional Water Board staff upon completion of the Plan to schedule a mutually agreeable date for a site inspection of the completed work. Regional Water

Board staff shall determine if the work has been accomplished according to the designs submitted to, and approved by, the Executive Officer.

Ordered by _____

Catherine Kuhlman
Executive Officer

August 13, 2007

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